

CONSULTANT CONTRACT

This Contract is by and between the **City of College Station**, a Texas Municipal Home-Rule Corporation (the "City") and **DMG-MAXIMUS**, an Illinois Corporation (the "Contractor"), whereby Contractor agrees to perform and the City agrees to pay for the work described herein.

ARTICLE I

1.01 This Contract is for preparation of a user fee study for Development Services (the "Project"). The scope and details of the work to be provided to the City by Contractor are set forth in **Exhibit "A"** to this Contract and are incorporated as though fully set forth herein by reference. Contractor agrees to perform or cause the performance of all the work described in **Exhibit "A."**

1.02 Contractor agrees to perform the work described in **Exhibit "A"** hereto and the City agrees to pay Contractor a fee based on the rates set forth in **Exhibit "B"** to this Contract for the services performed by Contractor. The invoices shall be submitted to the City following the 15th day and the last day of each month. The payment terms are net payable within thirty (30) calendar days of the City's receipt of the invoice. Upon termination of this Contract, payments under this paragraph shall cease, provided, however, that Contractor shall be entitled to payments for work performed in accordance with this Contract before the date of termination and for which Contractor has not yet been paid.

1.03 The total amount of payment, including reimbursements, by the City to Contractor for all services to be performed under this Contract may not, under any circumstances, exceed **Thirty-Eight Thousand Five Hundred and No/100 Dollars (\$38,500.00)**.

1.04 The City may from time to time request changes in the scope and focus of the activities, investigations, and studies conducted or to be conducted by Contractor pursuant to this Contract, provided, however, that any such change that in the opinion of Contractor, the City Manager, or the City's Project Manager varies significantly from the scope of the work set out herein and would entail an increase in cost or expense to the City shall be mutually agreed upon in advance in writing by Contractor and the City's Project Manager. Written change orders may be approved by the City Manager or his delegate provided that the change order does not increase the amount set forth in paragraph 1.03 of this Contract to more than **Fifty Thousand Dollars (\$50,000.00)**. Changes in the scope which would require an expenditure by the City of more than **Fifty Thousand Dollars (\$50,000.00)** shall be approved in advance by the City Council. Any request by the Contractor for an increase in the Scope of Services and an increase in the amount listed in paragraph 1.03 of this Contract shall be made and approved by the City prior to the Contractor providing such services or the right to payment for such additional services shall be waived.

1.05 Except as provided in Article VI hereinbelow, the Contractor shall complete all of the work described in **Exhibit "A"** by the dates set forth below.

- A. Initiation of project within 14 calendar days of authorization
- B. Collect and review relevant information and data within 60 calendar days of authorization
- C. Prepare final report and fee recommendations with 90 calendar days of authorization

1.06 **Time is of the essence of this Contract.** The Contractor shall be prepared to provide the professional services in the most expedient and efficient manner possible in order to complete the work by the times specified.

1.07 At any time, the City may terminate the Project for convenience, in writing. At such time, the City shall notify Contractor, in writing, who shall cease work immediately. Contractor shall be compensated for the services performed. In the event that the City terminates this Contract for convenience, the City shall pay Contractor for the services performed and expenses incurred prior to the date of termination.

1.08 Contractor promises to work closely with the City Manager or his designee (the "Project Manager") or other appropriate City officials. Contractor agrees to perform any and all Project-related tasks reasonably required of it by the City in order to fulfill the purposes of the work to be performed. The work of Contractor under this Contract may be authorized by the Project Manager in various phases as set forth in **Exhibit "A."**

1.09 In all activities or services performed hereunder, the Contractor is an independent Contractor and not an agent or employee of the City. The Contractor, as an independent Contractor, shall be responsible for the final product contemplated under this Agreement. Except for materials furnished by the City, the Contractor shall supply all materials, equipment and labor required for the execution of the work on the Project. The Contractor shall have ultimate control over the execution of the work under this Contract. The Contractor shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees and subContractors, and the City shall have no control of or supervision over the employees of the Contractor or any of the Contractor's subContractors except to the limited extent provided for in this Contract. Contractor shall be liable for any misrepresentations. Any negotiations by the Contractor on the City's behalf are binding on the City only when within the scope of work contained herein and approved by the City.

ARTICLE II

2.01 The City shall direct Contractor to commence work on the Project by sending Contractor a "letter of authorization" to begin work on the Project.

2.02 Upon receipt of the letter of authorization to begin work on the implementation of the Project, Contractor shall meet with the City for the purpose of determining the nature of the Project, including but not limited to the following: meeting with the City's staff to coordinate Project goals, schedules, and deadlines; coordinating data collection; briefing the City's management staff; documenting study assumptions and methodologies; devising the format for any interim reports and the final report to the City.

2.03 Contractor shall consult with the City and may, in some limited circumstances, act as the City's representative, but it is understood and agreed by the parties that for all purposes related to this Contract, Contractor shall be an independent Contractor at all times and is not to be considered either an agent or an employee of the City.

ARTICLE III

3.01 As an experienced and qualified professional, Contractor warrants that the information provided by Contractor reflects high professional and industry standards, procedures, and performances. Contractor warrants the design, preparation of drawings, the designation or selection of materials and equipment, the selection and supervision of personnel, the fitness and operation of its recommendations, and the performance of other services under this Contract, pursuant to a high standard of performance in the profession. Contractor warrants that it will exercise diligence and due care and perform in a good and workmanlike manner all of the services pursuant to this Contract. Approval or acceptance by the City of any of Contractor's work product under this Contract shall not constitute, or be deemed, a release of the responsibility and liability of Contractor, its employees, agents, or associates for the exercise of skill and diligence necessary to fulfill Contractor's responsibilities under this Contract. Nor shall the City's approval or acceptance be deemed to be the assumption of responsibility by the City for any defect or error in the Project's work products prepared by Contractor, its employees, associates, agents, or subContractors.

3.02 Contractor shall keep the City informed of the progress of the work and shall guard against any defects or deficiencies in its work.

3.03 Contractor shall be responsible for using due diligence to correct errors, deficiencies or unacceptable work product. Contractor shall, at no cost to the City, remedy any errors, deficiencies or any work product found unacceptable, in the City's sole discretion, as soon as possible, but no longer than fifteen (15) calendar days after receiving notice of said errors, deficiencies or unacceptable work product.

3.04 Contractor's work product shall be the exclusive property of the City. Upon completion or termination of this Contract, Contractor shall promptly deliver to the City all records, notes, data, memorandum, models, and equipment of any nature that are within

Contractor's possession or control and that are the City's property or relate to the City or its business.

ARTICLE IV

4.01 Contractor agrees to and shall indemnify and hold harmless the City, its officers, and agents and employees, from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including personal injury to or death of any person or damage to any tangible property, alleged by third parties (including employees of the parties to this Agreement, in their individual capacities), regardless of the nature of the claim, including all expenses of litigation, court costs, and attorneys' fees, arising out of or in connection with the negligence or misconduct of the Contractor in its performance under this agreement.

4.02 City, by this contract, does not give consent to litigation. Contractor assumes full responsibility for the work to be performed hereunder, and hereby releases, relinquishes and discharges City, its officers, agents and employees, from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to, including but not limited to, death of any person (whether the Contractor, or employees of either of the parties hereto) and any loss of or damage to tangible property (whether the same be that either of the parties hereto or of third parties) caused by or alleged to be caused, arising out of, or in connection with the Contractor's work to be performed hereunder whether or not said claims, demands and causes of action in whole or in part are covered by insurance. Provided however, that such release is not intended nor shall it be construed to apply to the City's contractual obligations.

ARTICLE V

5.01 The Contractor agrees to maintain the types and amounts of insurance required in this Contract throughout the term of the Contract. The following insurance policies shall be required:

1. Commercial General Liability.
2. Automobile Liability.
3. Workers' Compensation Insurance
4. Professional Liability.

5.02 For each of these policies, the Contractor's insurance coverage shall be primary insurance with respect to the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers, shall be considered in excess of the Contractor's insurance and shall not contribute to it. Certificates of insurance and

endorsements shall be furnished to and approved by the City's Representative *before* any letter of authorization to commence planning will issue or any work on the Project commences. No term or provision of the indemnification provided by the Contractor to the City pursuant to this Contract shall be construed or interpreted as limiting or otherwise affecting the terms of the insurance coverage. **All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Agreement, attached hereto as Exhibit "C," and approved by the City *before* work commences.**

5.03 The Contractor shall include all subContractors as additional insureds under its policies or shall furnish separate certificates and endorsements for each subContractor. All coverages for subContractors shall be subject to all of the requirements stated herein.

5.04 General Requirements Applicable to All Policies.

- (a) Only insurance carriers licensed and admitted to do business in the State of Texas will be accepted.
- (b) Deductibles shall be listed on the certificate of insurance and are acceptable only on a "per occurrence" basis for property damage only.
- (c) "Claims made" policies will not be accepted, except for Professional Liability insurance.
- (d) Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) calendar days prior written notice has been given to the **City** by certified mail, return receipt requested.
- (e) Upon request, certified copies of all insurance policies shall be furnished to the **City**.
- (f) The certificates of insurance shall be prepared and executed by the insurance company or its authorized agent. Each certificate shall contain the following provisions and warranties: (a) that the insurance company is licensed and admitted to do business in the State of Texas; (b) that the insurance policy is underwritten on forms provided by the Texas State Board of Insurance or ISO; (c) all endorsements and coverages according to the requirements of this Contract; (d) the form of notice of cancellation, termination, or change in coverage provisions; and (e) original endorsements affecting coverage required by this Contract.
- (g) The **City**, its officials, employees, and volunteers are to be added as "Additional Insureds" to the Commercial (Public) Liability and Business Automobile Liability Policies. The coverage shall contain no special limitations on the scope of protection afforded to the **City**, its officials, employees, and volunteers.

5.05 Commercial General Liability requirements:

- (a) Coverage shall be written by a carrier with an "A:VIII" or better rating in accordance with the current Best Key Rating Guide.
- (b) Minimum Combined Single Limit of \$600,000 per occurrence for bodily injury and property damage.
- (c) Coverage shall be at least as broad as Insurance Service's Office Number CG 00 01.
- (d) No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.
- (e) The coverage shall include but not be limited to: premises/operations; independent contracts, products/completed operations, contractual liability (insuring the indemnity provided herein), and where exposures exist, "Explosion Collapse and Underground" coverage.

5.06 Business Automobile Liability requirements:

- (a) Coverage shall be written by a carrier with an "A:VIII" or better rating in accordance with the current Best Key Rating Guide.
- (b) Minimum Combined Single Limit of \$600,000 per occurrence for bodily injury and property damage.
- (c) The Business Auto Policy must show Symbol 1 in the Covered Autos portion of the liability section in Item 2 of the declarations page.
- (d) The coverage shall include owned or leased autos, non-owned autos, and hired cars.

5.07 Workers' Compensation Insurance requirements:

- (a) Employer's Liability limits of \$100,000.00 for each accident is required.
- (b) "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
- (c) Texas must appear in Item 3A of the Worker's Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.

5.08 Professional Liability requirements:

- (a) Coverage shall be written by a carrier with a "A:VIII" or better rating in accordance with the current Best Key Rating Guide.
- (b) Minimum of \$500,000 per occurrence and \$500,000 aggregate.
- (c) Coverage must be maintained for two (2) years after the termination of this Contract.

ARTICLE VI

6.01 At any time, the **City** may terminate the Project for convenience, in writing. At such time, the **City** shall notify Contractor, in writing, who shall cease work immediately. Contractor shall be compensated for the services performed. In the event that the **City** terminates this Contract for convenience, the **City** shall pay Contractor for the services performed and expenses incurred prior to the date of termination.

6.02 No term or provision of this Contract shall be construed to relieve the Contractor of liability to the **City** for damages sustained by the **City** or because of any breach of contract by the Contractor. The **City** may withhold payments to the Contractor for the purpose of setoff until the exact amount of damages due the **City** from the Contractor is determined and paid.

ARTICLE VII

7.01 This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Brazos County, Texas.

7.02 Notices shall be mailed to the addresses designated herein or as may be designated in writing by the parties from time to time and shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

City of College Station:
Charles Cryan, Director of Fiscal Services
City of College Station
P.O. Box 9601
College Station, Texas 77842

Contractor:
DMG-MAXIMUS
Walter Huelsman, National Director Utility Consulting
4438 Centerview Rd., Suite 302
San Antonio, Texas 78228
(972) 490-9990 Fax: (972) 490-3040

7.03. Contractor, its employees, associates or subContractors shall perform all the work hereunder. Contractor agrees that all of its associates, employees, or subContractors who work on this Project shall be fully qualified and competent to do the work described hereunder. Contractor shall undertake the work and complete it in a timely manner.

7.04 The Contractor shall comply with all applicable federal, state, and local statutes, regulations, ordinances, and other laws, including but not limited to the Immigration Reform and Control Act (IRCA). The Contractor may not knowingly obtain the labor or services of an unauthorized alien. The Contractor, not the City, must verify eligibility for employment as required by IRCA.

7.05 No waiver by either party hereto of any term or condition of this Contract shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

7.06 This Contract and all rights and obligations contained herein may not be assigned by Contractor without the prior written approval of the City.

7.07 If any provision of this Contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it may become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

7.08 This Contract represents the entire and integrated agreement between the City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may only be amended by written instrument approved and executed by the parties.

7.09 The parties acknowledge that they have read, understood, and intend to be bound by the terms and conditions of this Contract.

7.10 This Contract will be effective when signed by the last party whose signing makes the Contract fully executed.

DMG-MAXIMUS

By: Walter Huelssman
Printed Name: WALTER HUELSSMAN
Title: Vice President
Date: 2/12/01

CITY of College Station, Texas

Tom Brymer, College Station CITY Manager

Date

Stacy J. Anderson
Harvey Cargill, CITY Attorney

2/14/01

Date

Charles Cryan, Director of Fiscal Services

Date

Scope of Services

The PROJECT is for the preparation of a user fee study for Development Services, which includes the following services:

- A. Meet with the Director of Fiscal Services and the Director of Public Utilities, Water/Wastewater Division Director and other City staff to initiate the project;
- B. Initiate data collection efforts;
- C. Meet with Public Utilities staff to determine current fees;
- D. Meet with Finance and Public staff to develop initial cost/revenue allocation factors;
- E. Develop and review water cost of service by customer class to include inside of City limit and outside of City limit costs;
- F. Develop rate design for water cost-of-service including options that would consider water conservation issues, such as inverted summer block rates, wholesale service rates including a raw water and finished water rates, etc.;
- G. Develop a rate class for Welborn Water Supply Corp, and identify the cost of developing the rate;
- H. Develop and review wastewater cost-of-service by customer class to include inside of City limit and outside of City limit costs;
- I. Develop rate design for wastewater cost of service including options that include increased capital investment for planned plant expansion;
- J. Prepare and review Draft Report
- K. Develop and present water and wastewater cost-of-service and rate design models along with training to City employees
- L. Prepare Final Report;
- M. Present study results and Final Report to City management and City Council.

Scope of Services

The PROJECT is for the preparation of a user fee study for Development Services, which includes the following services:

- A. Meet with the Director of Fiscal Services and the Director of Public Utilities, Water/Wastewater Division Director and other City staff to initiate the project;
- B. Initiate data collection efforts;
- C. Meet with Public Utilities staff to determine current fees;
- D. Meet with Finance and Public staff to develop initial cost/revenue allocation factors;
- E. Develop and review water cost of service by customer class to include inside of City limit and outside of City limit costs;
- F. Develop rate design for water cost-of-service including options that would consider water conservation issues, such as inverted summer block rates, wholesale service rates including a raw water and finished water rates, etc.;
- G. Develop a rate class for Welborn Water Supply Corp, and identify the cost of developing the rate;
- H. Develop and review wastewater cost-of-service by customer class to include inside of City limit and outside of City limit costs;
- I. Develop rate design for wastewater cost of service including options that include increased capital investment for planned plant expansion;
- J. Prepare and review Draft Report
- K. Develop and present water and wastewater cost-of-service and rate design models along with training to City employees
- L. Prepare Final Report;
- M. Present study results and Final Report to City management and City Council.

Payment Terms

Payment is a fixed fee in the amount of Thirty-eight thousand-five hundred and no/100 dollars (\$38,500.00) as listed in Article II of this Contract. This amount shall be payable by the City pursuant to the schedule listed below and upon completion of the services and written acceptance by the City.

Schedule of Payment:

Contractor will receive ten (10%) percent (\$3,850.00) within ten (10) working days of receipt of original signed contract and all associated materials and upon acceptance by City of all terms and conditions.

Contractor will receive thirty (30%) percent (\$11,550.00) within ten (10) working days of receipt of draft memo on revenue requirements (deliverable # 4).

Contractor will receive thirty (30%) percent (\$11,550.00) within ten (10) working days of receipt draft report and upon acceptance of the draft report by City.

Contractor will receive twenty (20%) percent (\$7,700.00) within ten (10) working days of receipt, review and acceptance of final report by City, and presentation of recommended rate changes to the City Council.

Contractor shall receive balance ten (10%) percent (\$3,850.00) of contract amount within ten (10) working days of receipt, delivery of water and wastewater cost-of-service rate models and training on the use of the models.

Certificate(s) of Insurance

Scope of Services

The PROJECT is for the preparation of a user fee study for Development Services, which includes the following services:

- A. Meet with the Director of Fiscal Services and the Director of Public Utilities, Water/Wastewater Division Director and other City staff to initiate the project;
- B. Initiate data collection efforts;
- C. Meet with Public Utilities staff to determine current fees;
- D. Meet with Finance and Public staff to develop initial cost/revenue allocation factors;
- E. Develop and review water cost of service by customer class to include inside of City limit and outside of City limit costs;
- F. Develop rate design for water cost-of-service including options that would consider water conservation issues, such as inverted summer block rates, wholesale service rates including a raw water and finished water rates, etc.;
- G. Develop a rate class for Welborn Water Supply Corp, and identify the cost of developing the rate;
- H. Develop and review wastewater cost-of-service by customer class to include inside of City limit and outside of City limit costs;
- I. Develop rate design for wastewater cost of service including options that include increased capital investment for planned plant expansion;
- J. Prepare and review Draft Report
- K. Develop and present water and wastewater cost-of-service and rate design models along with training to City employees
- L. Prepare Final Report;
- M. Present study results and Final Report to City management and City Council.